

TESTIMONY OF DR. JOHN KAISER

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In the United States Federal District Court for the District of Idaho
Saint Alphonsus Medical Center-Nampa, Inc., et. al. v. St. Luke's Health System Ltd., et. al.
Case No. 1:12-cv-00560-BLW

Page Range: 10:5-10:12

10: 5 Q. Please state your full name for the record.
10: 6 A. Dr. John Kaiser.
10: 7 Q. Dr. Kaiser, where are you currently employed?
10: 8 A. Saltzer Medical Group.
10: 9 Q. How long have you been employed at Saltzer
10:10 Medical Group?
10:11 A. I entered employment in 1999. I think it was
10:12 August 1999.

Page Range: 12:14-12:24

12:14 Q. And you joined the Saltzer Medical Group
12:15 directly after completing your residency?
12:16 A. Yes, I did.
12:17 Q. What is your current title with the Saltzer
12:18 Medical Group?
12:19 A. President.
12:20 Q. What are your roles and responsibilities as
12:21 president of Saltzer Medical Group?
12:22 A. To oversee the executive committee, to
12:23 participate in managerial decisions as outlined in the
12:24 bylaws of the corporation.

Page Range: 74:15-74:25

74:15 Q. Okay. In 2009 was -- was the consensus
74:16 within Saltzer that the group should remain
74:17 independent?
74:18 A. So in 2009 we had just started our
74:19 investigation of what we could or might do. And
74:20 it was a long process and there were different
74:21 points at different times. I don't know exactly,
74:22 but we were moving from a totally independent. So
74:23 certainly in the beginning before knowing all of
74:24 our options, we were more on the track of being an
74:25 independent group.

Page Range: 95:12-95:25

95:12 Q. Well, let's see if we can refresh your
95:13 recollection on this one. Let me show you what's
95:14 been previously marked as Deposition Exhibit 102,
95:15 which is a report to St. Luke's by WIPFLi or
95:16 WIPFLi, I think someone explained to me.
95:17 Have you ever seen this report?
95:18 A. I don't recall seeing it.
95:19 Q. Why don't you turn to page 38,
95:20 Bates-numbered 892244.
95:21 A. I'm sorry, what page?
95:22 Q. It's got the little "38" in the lower
95:23 right there.
95:24 A. Can I take a minute just to look
95:25 through this?

Page Range: 96:11-96:15

96:11 Q. Page 38 you see it says, "We also
96:12 interviewed Dr. Kaiser of Saltzer Medical
96:13 Group ..."?
96:14 A. Yeah. I do recall -- I didn't
96:15 recognize the name.

Page Range: 97:18-97:20

97:18 Q. Okay. And -- and if patients make all
97:19 of the choices and you don't recommend, how are
97:20 you able to estimate a number, Doctor?

Page Range: 97:23-98:7

97:23 THE WITNESS: So what this is in reference
97:24 to is my patients, OB patients, specifically, tend
97:25 to request St. Luke's facilities. There are no
Page 98
98: 1 St. Luke's facilities in the Nampa community.
98: 2 If when opened, it is my belief, and
98: 3 I don't know for certainty, that a significant
98: 4 portion would then rather than going downtown
98: 5 Boise or to the Meridian -- Meridian facility,
98: 6 would then have their obstetrics care done in
98: 7 Nampa.

Page Range: 98:18-98:24

98:18 Q. Okay. And the next bullet says, again,
98:19 according to Dr. Kaiser, "An 80- to 90-bed
98:20 facility in Nampa would appear reasonable given
98:21 the size of the Saltzer Medical Group expected to
98:22 support this new facility." Does that accurately
98:23 paraphrase what they -- what you told them?
98:24 A. Yes. I believe it does.

Page Range: 100:20-101:9

100:20 Q. BY MR. ETTINGER: Why don't we go back
100:21 to Mr. Reiboldt's letter. Now under No. 4 --
100:22 A. I'm sorry, you're referring back to?
100:23 Q. Back to exhibit --
100:24 A. What page?
100:25 Q. -- 191, Mr. Reiboldt's letter, page 3
Page 101
101: 1 of the letter, Bates-numbered 33852.
101: 2 A. Okay.
101: 3 Q. Okay. Under No. 4, the first subbullet
101: 4 says, "The Practice wants to maintain independence
101: 5 while aligning."
101: 6 As of December of 2010, is that an
101: 7 accurate characterization of where the group
101: 8 was?
101: 9 A. I would say probably was.

Page Range: 113:7-113:24

113: 7 Did the St. Luke's consultants and
113: 8 personnel who evaluated Saltzer as part of your
113: 9 discussions indicate that they thought Saltzer was
113:10 run efficiently?
113:11 A. I recall comments from consultants
113:12 saying, yes, they thought that we were efficient.
113:13 I don't know what criteria they were using but ...
113:14 Q. Did Peter LaFleur say that?
113:15 A. I believe he did.
113:16 Q. Okay. And you believe that Saltzer
113:17 provides quality medical services?
113:18 A. I hope. We try to. 113:19
Q. All right. And do you
113:19 recall
113:20 compliments from St. Luke's personnel on that

113:21 subject?
113:22 A. I can't give you a specific reference,
113:23 but, yes, I recall them saying they thought we
113:24 provided good care.

Page Range: 115:25-116:3

115:25 Q. So who -- who -- was there somebody who
Page 116
116: 1 tended to be the scribe for the negotiating
116: 2 committee?
116: 3 A. Nancy Powell did a lot of it.

Page Range: 117:3-117:21 117: 3

117:3 Q. Okay. And -- and was it true that the
117: 4 initial proposals by Saltzer were focused on
117: 5 allowing it to remain autonomous?
117: 6 A. Yes.
117: 7 Q. Okay. And was the focus also on
117: 8 getting more compensation for the Saltzer
117: 9 physicians?
117:10 A. Fair market value, compensation, yes.
117:11 Q. Well, I mean I assume everybody
117:12 understood that it had to be fair market value but
117:13 they were also seeking more money, weren't they?
117:14 A. Everyone?
117:15 Q. Was it -- was it generally?
117:16 A. No. I can say no to that one.
117:17 Q. Was it generally the case that the
117:18 physicians at Saltzer were seeking --
117:19 A. Yes.
117:20 Q. -- more money from this transaction?
117:21 A. Yes. Yes.

Page Range: 124:24-125:14

124:24 Q. BY MR. ETTINGER: You've been handed
124:25 Exhibit 1159, a letter to Gary Fletcher from
Page 125
125: 1 Max Reiboldt, cc'ing a number of people, including
125: 2 Dr. Kaiser, Bates-numbered SMG383895 through -897.
125: 3 Why don't you take a look at the letter in general
125: 4 and then I'll ask you about it.
125: 5 A. (Reviewing document.)

125: 6 MR. ETTINGER: I should add for the record
125: 7 that this letter with a Coker Bates number is
125: 8 already Plaintiff's Exhibit 1159, but it made sense
125: 9 to have it as a Saltzer Bates number as well.
125:10 THE WITNESS: Okay.
125:11 Q. BY MR. ETTINGER: So is this a letter
125:12 that Mr. Reiboldt sent to Mr. Fletcher turning
125:13 down St. Luke's then-current proposal to affiliate
125:14 with Saltzer?

Page Range: 125:16-125:22

125:16 THE WITNESS: This is a letter that was sent
125:17 describing results of a -- a ballot that was
125:18 conducted by Max Reiboldt on the then-form of the
125:19 PS agreement.
125:20 Q. BY MR. ETTINGER: And that was the
125:21 then-form presented by St. Luke's?
125:22 A. Correct, yes.

Page Range: 130:25-131:5

130:25 Q. BY MR. ETTINGER: Okay. So as of
Page 131
131: 1 August of 2011, the time of this letter, there was
131: 2 still a strong feeling by the members of the group
131: 3 that they wanted as much independence as they
131: 4 could maintain, correct?
131: 5 A. Correct.

Page Range: 132-5-132:5

132:5 Q. BY MR. ETTINGER: But this was a -- the
132: 6 issue was that if Saltzer was a department of the
132: 7 hospital, it could be billed at higher rates;
132: 8 isn't that right?

Page Range: 132:11-132:18

132:11 THE WITNESS: Again, I would say there are
132:12 experts that could answer that question much
132:13 better than I could.
132:14 Q. BY MR. ETTINGER: Was -- was that
132:15 position articulated in the course of the

132:16 discussions?
132:17 A. Yes. This was one of the points
132:18 articulated.

Page Range: 134:11-135:1

134:11 Q. Okay. Let's take a look at what's been
134:12 marked previously as Plaintiff's Exhibit 1160.
134:13 And is 1160 another Max Reiboldt letter,
134:14 this one to John Kee and Peter LaFleur on behalf
134:15 of Saltzer?
134:16 A. Yes, it is.
134:17 Q. Why don't you turn to page -- not
134:18 page 9 of 10 of the letter, Bates-numbered
134:19 COKER9508.
134:20 A. I was reading that first paragraph.
134:21 Q. Oh, go ahead. Take -- take a look at
134:22 whatever you want to look at.
134:23 A. I finished that, could you tell me
134:24 where you're asking me to turn to?
134:25 Q. Page 9 of 10 of the letter, page
Page 135
135: 1 COKER9508.

Page Range: 135:9-136:9

135: 9 Q. Do you see -- why don't you look at the
135:10 first bullet and subbullet on page 9508. It
135:11 starts out, "There's a significant disparity
135:12 between the compensation increases for primary
135:13 care and specialists."
135:14 Do you see that?
135:15 A. I do.
135:16 Q. Is the discussion there accurate as far
135:17 as you know?
135:18 A. Not complete, but accurate.
135:19 Q. Okay. Complete, that's a metaphysical
135:20 concept, but we'll stick with accurate for now.
135:21 Now, you say here, "...the average" --
135:22 it says here, you don't say it -- is says here,
135:23 "... the average primary care increase is 35%
135:24 while the average specialty increase is 18%.
135:25 Inclusive within these two categories are
136: Page 136
136: 1 increases as high as 47% (Internal Medicine) and
136: 2 as low as 5% (ENT and orthopedics.)"

136: 3 Why was that a concern to Saltzer?
136: 4 A. Why was what a concern?
136: 5 Q. These disparities?
136: 6 A. The disparities?
136: 7 Q. Yes.
136: 8 A. A concern for the people who were
136: 9 making 5 percent as being too low.

Page Range: 202:23-204:2

202:23 (Plaintiffs' Exhibit 1386 marked.)
202:24 MR. ETTINGER: You've been handed exhibit
202:25 1386, Dr. Kaiser, an E-mail from you to SMG
Page 203
203: 1 Everyone, Bates-numbered SMG286177, it's dated
203: 2 November 20, 2012. Take a look at it and I will
203: 3 ask you about it.
203: 4 A. Go ahead.
203: 5 Q. Is this an E-mail that you sent to all
203: 6 staff at Saltzer?
203: 7 A. Yes, it is.
203: 8 Q. And you sent it after the lawsuit by
203: 9 Saint Alphonsus had been filed?
203:10 A. Correct.
203:11 Q. You sent it after the Saltzer surgeons
203:12 had left Saltzer?
203:13 A. Correct.
203:14 Q. And I just want to ask you about
203:15 one sentence, the last sentence in the first
203:16 paragraph. It said, "For each of our employees I
203:17 would like to emphasize that you will continue to
203:18 have your jobs no matter what course these
203:19 investigations and legal challenges take."
203:20 A. Um-hum.
203:21 Q. Is that your statement?
203:22 A. That is what is written.
203:23 Q. And did you believe that at the time?
203:24 A. With caveats, yes.
203:25 Q. There are no caveats in the E-mail you
Page 204
204: 1 sent out.
204: 2 A. I didn't give a time frame.

Page Range: 204:3-204:6

204: 3 Q. So what did you -- well, what was

204: 4 your -- what was -- what was in your brain when
204: 5 you wrote it as to how long they would continue to
204: 6 have their jobs?

Page Range: 204:8-205:3

204: 8 THE WITNESS: So if you take the context of
204: 9 this letter, we had just undergone a significant
204:10 disruption to our clinic. One, a lawsuit filed.
204:11 The weekend before that, all of our high producers
204:12 had left and gone to Saint Al's. We had recently
204:13 lost another physician who was a high income
204:14 earner to a death and there was lots of stress in
204:15 our group and we were about to enter the holiday
204:16 seasons, meaning Thanksgiving and Christmas.
204:17 We had also started negotiations with
204:18 the -- down the path of St. Luke's providing for
204:19 our employees contracts or offers of employment.
204:20 With all of that, I wanted to reassure
204:21 our staff that in the short term, doesn't say
204:22 "short term," but that's what my intent was, is
204:23 you're not going to -- we're not going to fire
204:24 you, you're not going to lose your job. This was
204:25 intended to reassure these people that we have
Page 205
205: 1 work in front of us, we're going to do the best
205: 2 thing we can to try to help you and keep you in --
205: 3 employed.

Page Range: 205:25-206:8

205:25 Q. You didn't have any time frame in the
Page 206
206: 1 E-mail, did you?
206: 2 A. But it's clear that I could not assure
206: 3 them for ad infinitum that anybody would be
206: 4 continue to be employed.
206: 5 Q. Well, this says, "... no matter what
206: 6 course these investigations and legal challenges
206: 7 take." Those are your words, right?
206: 8 A. Correct.

Page Range: 206:9-206:18

206: 9 Q. Those are strong words, aren't they?

206:10 "... no matter what course ..."
206:11 A. They are. And probably overstated, if
206:12 you wish to have my opinion at this point in time.
206:13 Trying to reassure people the sky is not falling,
206:14 we are not going to fire you, you're not going to
206:15 lose your benefits. These are people who we have
206:16 had in our employment for a long period of time,
206:17 and perhaps even you could understand why they
206:18 might be a bit concerned about their future.

Page Range: 207:22-208:6

207:22 Q. Well this says "... no matter what
207:23 course the investigations ... take," which means
207:24 whether the FTC sues or not, correct? Isn't that
207:25 what those words mean?

Page 208

208: 1 A. Not necessarily.
208: 2 Q. What -- what did you intend to convey
208: 3 by "... no matter what course these investigations
208: 4 ... take" if not -- whether the FTC sues or not?
208: 5 What else did you intend to convey by that phrase?
208: 6 A. That they would have their --

Page Range: 208:8-208:15

208: 8 THE WITNESS: That they would have their
208: 9 jobs and not be fired, because we could have fired
208:10 them because there was not enough work for all of
208:11 our employees.
208:12 Q. BY MR. ETTINGER: Had their jobs for
208:13 how long?
208:14 A. I don't know. I couldn't have answered
208:15 that question if you asked me the next day.

Page Range: 251:4-251:15

251: 4 Q. Since -- since the Saltzer surgeons
251: 5 resigned, the former Saltzer surgeons, have you
251: 6 had discussions with the primary care physicians
251: 7 about referring their patients to those former
251: 8 Saltzer surgeons?
251: 9 A. We have had questions come up in -- for
251:10 example, executive committee where they -- some of
251:11 the primary care have asked, so should I continue

251:12 to refer to this or should I use this doctor? And
251:13 my response has been you use the doctor that you
251:14 think is best for the patient or that the patient
251:15 wants.

Page Range: 251:16-251:23

251:16 Q. Okay. And referrals to -- referrals to
251:17 Saltzer surgeons, former Saltzer surgeons, are
251:18 down substantially, aren't they?
251:19 A. Well, they no longer work at either of
251:20 the facilities that we tend to refer to.
251:21 Q. Just try to answer my question.
251:22 A. So the answer is yes as far as I know,
251:23 although I don't know the exact numbers.

Page Range: 264:3-264:13

264: 3 Other than complaints about the charges
264: 4 associated with procedures, are you aware of
264: 5 Saltzer physicians ordering unnecessary
264: 6 procedures?
264: 7 A. No, not that I can recall.
264: 8 Q. Are you aware of Saltzer physicians
264: 9 performing unnecessary tests, such as labs or
264:10 MRIs?
264:11 A. No. I cannot say that I know of any
264:12 data that we would have that indicated that there
264:13 was excessive ordering of tests.

Page Range: 266:11-267:10

266:11 Q. Does Saltzer implement evidence-based
266:12 medicine?
266:13 A. Individual physicians choose to use
266:14 what they are aware of in their departments or
266:15 their fields of specialty, and it is their
266:16 responsibility to implement them and utilize them
266:17 as they see fit.
266:18 The other area would be where it
266:19 involves hospitals and whether there are
266:20 guidelines for what should be done, shouldn't be
266:21 done and how to do it, then it would fall under --
266:22 those physicians would fall under those guidelines
266:23 provided by the hospitals.

266:24 Q. Can you provide some examples of
266:25 physicians implementing those best practices?

Page 267

267: 1 A. Okay. I'll use my field. Obstetrics.
267: 2 We used to induce labor early at kind of variable
267: 3 time frames, and there was a large study that came
267: 4 out several years ago that looked at induction of
267: 5 labor before 39 weeks and was found that even a
267: 6 day early did have increased risk for the baby
267: 7 being admitted to the NICU. And so policies went
267: 8 down unless there is medical indications for doing
267: 9 early inductions, we don't do them. Most of us
267:10 have adopted that practice.